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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ANGELO DENNINGS, et al.,

11 Plaintiffs,

12 v.

13 CLEARWIRE CORPORATION,

14 Defendant.

CASE NO. C10-1859JLR

ORDER DENYING MOTION TO
VACATE

15 Before the court is Objectors Gordan Morgan and Jeremy De La Garza's notice of
16 posting of appeal bond and motion to vacate order to appear and show cause. (Mot. (Dkt.
17 # 155).) The court recently ordered Objectors' counsel to appear in this court and show
18 cause why they and their clients should not be sanctioned for failing to comply with a
19 court order to post an appeal bond. (7/19/13 Order (Dkt. # 154) at 1.) Counsel for
20 Objectors was warned in advance that failure to timely post the bond would expose him
21 and his clients to sanctions. (*Id.*) Objectors did not post bond in a timely fashion, so the
22 court scheduled a hearing to resolve the issue of sanctions. (7/19/13 Order.) After the

1 court scheduled this hearing, Objectors posted the required bond. (*See* Mot.) They now
2 argue that sanctions are unnecessary. (*Id.*) The court disagrees. The parties did not
3 follow the court’s order, and the fact that they subsequently posted bond does not excuse
4 their prior inappropriate conduct. Accordingly, the court DENIES Objectors’ motion to
5 vacate.

6 I. BACKGROUND

7 This saga began with a class action lawsuit against internet service provider
8 Clearwire brought by a putative class of Clearwire customers. The parties to that lawsuit
9 reached a settlement and Objectors—who are both class members—challenged the class
10 settlement, claiming it was “illusory and violated Rule 23 and Ninth Circuit precedent.”
11 (Obj. to Att. Fee Mot. (Dkt. # 76 at 2)). After Plaintiffs accused Objectors of being
12 “professional objectors,” this court determined that Plaintiffs had raised “legitimate
13 concerns regarding whether the objections made by Mr. Morgan and Mr. De La Garza
14 [were] serious and whether their attorney is a so-called ‘professional objector,’”
15 (12/11/12 Order (Dkt. # 84)), and granted Plaintiffs’ motion to depose the Objectors (*id.*).
16 The depositions revealed that Mr. Morgan had no personal objection to the settlement,
17 neither of them had read the settlement agreement or their own objections to it, and both
18 had worked with the same attorney on other class action cases. (*See* Memorandum (Dkt.
19 # 97), Exs. A, B (depositions of Mr. Morgan and Mr. De La Garza)). The court approved
20 the proposed settlement and rejected the challenges raised by the Objectors. (12/20/12
21 Order (Dkt. # 99)).
22

1 The Objectors appealed the order to the Ninth Circuit. (1/18/13 Not. of App. (Dkt.
2 # 101)). Plaintiffs moved to obtain an order requiring an appeal bond (2/20/13 Mot. (Dkt.
3 # 107)) and the court granted the motion (3/11/13 Order (Dkt. # 117)). The Objectors
4 proceeded with their appeal without complying with the bond order, and the Ninth Circuit
5 rejected the appeal and affirmed this court's settlement order and final judgment. *See*
6 4/22/13 Order, *Dennings v. Clearwire*, No. 13-35038 (9th Cir. Apr. 22, 2013). The
7 Objectors petitioned for rehearing in the Ninth Circuit, *see* Petition for Rehearing,
8 *Dennings v. Clearwire*, No. 13-35038 (9th Cir. May 6, 2013), prompting Plaintiffs to
9 move for contempt for violating this court's bond order (5/9/13 Mot. (Dkt. # 128)). In
10 response, Objectors moved to dismiss their appeal voluntarily, *see* Mot. to Dismiss Case
11 Voluntarily, *Dennings v. Clearwire*, No. 13-35038 (9th Cir. May 15, 2013), and the Ninth
12 Circuit granted the motion, *see* 5/24/13 Order, *Dennings v. Clearwire*, No. 13-35038 (9th
13 Cir. May 24, 2013).

14 This court also granted class counsel's renewed motion (3/27/13 Mot. (Dkt.
15 # 120)) for attorney's fees and expenses (5/3/13 Order (Dkt. # 127)). Continuing their
16 pattern, Objectors appealed this order to the Ninth Circuit. (6/3/13 Not. of App. (Dkt.
17 # 132)). Plaintiffs moved for another order requiring an appeal bond for Objectors to
18 proceed (6/3/13 Mot. (Dkt. # 134)) and this court granted the motion (7/9/13 Order (Dkt.
19 # 149)). Perhaps having learned from their prior attempt to proceed with their appeal
20 without complying with this court's bond order, Objectors adopted a new strategy to
21 achieve the same result: attempting to post a \$2,000.00 bond and filing an "Emergency
22 Motion" to stay enforcement of this court's order "to allow the Ninth Circuit to decide

1 the validity of the [remaining] portion of the bond amounting to \$39,150,” (7/9/13 Mot.
 2 (Dkt. # 151)) and appealing the order to the Ninth Circuit (7/9/13 Not. of App. (Dkt.
 3 # 150)). This court denied Objectors’ Emergency Motion (7/11/13 Order (Dkt. # 152)),
 4 whereupon Objectors tried again by bringing a similar motion in the Ninth Circuit. The
 5 Ninth Circuit summarily rejected Objectors’ arguments and denied their motion. (Order
 6 of USCA (Dkt. # 153).) Four days later, Objectors still had not posted bond, so the court
 7 ordered Objectors’ counsel to appear and show cause why Objectors and their attorneys
 8 should not be sanctioned for failing to comply with the court’s order. (7/19/13 Order.)

9 II. ANALYSIS

10 As demonstrated by the above recital of facts, Objectors’ decision to ignore the
 11 court’s appeal bond order is only the most recent episode in Objectors’ ongoing
 12 procedural machinations before this court and the Ninth Circuit. Objectors’ strategy this
 13 time around is consistent with their behavior in these proceedings: they appear to believe
 14 that they do not need to follow court orders until they are threatened with sanctions for
 15 failing to do so.¹ (*See generally* 7/11/13 Order (Dkt. # 152).) This is not acceptable
 16 conduct for attorneys appearing before this court.

17 Objectors directly disobeyed a court order. They were ordered to either post a
 18 bond within five days or else withdraw their appeal. They did neither. Instead, they

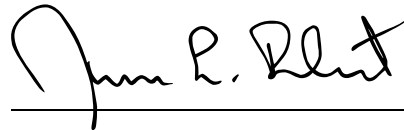
20 ¹ Objectors argue that it simply “took some time to make arrangements” for the transfer
 21 of the money. (Mot. at 3.) Objectors’ decision to post only \$2,000.00 (in direct contravention of
 22 the court’s order) belies this argument. In any event, if Objectors needed more time to make
 arrangements, the proper course of action would have been to move for more time, not to simply
 ignore the court’s order.

1 attempted to post a \$2,000.00 bond, which is not what they were ordered to do.
2 Objectors argue that they simply “follow[ed] the steps established in *Azizian v. Federated*
3 *Dept. Stores, Inc.*,” 499 F.3d 950, 961-62 (9th Cir. 2007), by attempting to post the
4 undisputed \$2,000.00 portion of the bond. But *Azizian* does not “establish steps” that
5 allow an appellant to simply ignore the portion of an appeal bond order it believes is
6 incorrect. *See id.* To the contrary, the court in *Azizian*, on similar facts as are present in
7 this case, seriously entertained a motion to dismiss the appeal for failing to comply with
8 the district court’s appeal bond order and instead only posting the \$2,000.00 undisputed
9 portion of the bond ordered. *Id.* The Ninth Circuit in no way condoned the appellant’s
10 behavior, it simply decided that a sanction of dismissal was inappropriate. *Id.* That
11 certainly does not preclude lesser sanctions in the district court, particularly where
12 Objectors’ appeal appears to be frivolous and the conduct of their counsel demonstrates a
13 general disregard for the court’s orders.

14 Because they disobeyed a court order, Objectors and their counsel may be subject
15 to sanctions. The fact that Objectors posted bond after being ordered to appear and face
16 sanctions does not exonerate Objectors any more than it would exonerate a criminal
17 defendant to return stolen property after being charged with theft. The punishable
18 conduct has already occurred and cannot be taken back. Accordingly, Objectors’ counsel
19 have been ordered to appear in court, explain their actions, and face sanctions should the
20 court decide to impose them. The court reaffirms its original order and DENIES
21 Objectors’ motion to vacate.
22

1 Last, Objectors' counsel requests the opportunity to appear by telephone instead of
2 appearing in person. The court denies this request as well. If Objectors' counsel intends
3 to litigate in the State of Washington, he must be prepared to appear in Washington when
4 ordered to do so by the court. The nature of Objectors' behavior in these proceedings
5 makes this sanctions hearing more appropriate for in-person resolution. For the
6 foregoing reasons, the court DENIES Objectors' motion to vacate (Dkt. # 155).

7 Dated this 26th day of July, 2013.

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10 JAMES L. ROBART
11 United States District Judge
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